THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 2900 of 1998

O r d e r:

The petitioner is working as Driver with the respondents-A.P.S.R.T.C. On 26.11.1992, while driving the bus bearing No. AP 9Z 4199 on the route Vinukonda – Guntur, it met with an accident when it hit a lorry. Pursuant thereto, the petitioner was placed under suspension. However, pending initiation of disciplinary proceedings, the suspension imposed on the petitioner was revoked. Three charges were framed against the petitioner. The Enquiry Officer having conducted the enquiry, submitted his report stating that the charges leveled against the petitioner stood proved. Based on the report of the Enquiry Officer, and considering the explanation submitted by the petitioner to the show cause notice, the disciplinary authority, namely the Depot Manager, Vinukonda, vide order dated 21.08.1993 imposed punishment of postponement of one increment for a period of 18 months with cumulative effect, and ordered recovery of damages of Rs. 1,000/- from the petitioner. Assailing this order, the petitioner preferred appeal before respondent No.2, namely the Divisional Manager, Narsaraopet, who by order dated 14.02.1994 rejected the same. The review petition filed by the petitioner before respondent No,2, namely Regional Manager, Guntur, assailing the order passed in the appeal, was also rejected by order dated 23.11.1995. Impugning the said order passed by respondent No.2, rejecting the review petition, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-A.P.S.R.T.C.

The learned counsel for the petitioner submitted that the disciplinary authority having found the petitioner guilty of the charges, ought not to have imposed two punishments for the same misconduct – one ordering recovery of damages of Rs.1,000/- and the other postponement of one increment for a period of 18 months with cumulative effect, and such imposition of punishments for the same misconduct amounted to double jeopardy. He submitted that no person can be meted out with dual punishment for the same misconduct, and in support of this submission, he placed reliance on the judgment of a Division Bench of this Court in **Depot Manager, A.P.S.R.T.C. v. N. Ramulu**. He submitted that postponement of one increment for a period of 18 months with cumulative effect could not have been imposed by the disciplinary authority without regular departmental enquiry and properly considering the explanation submitted by the petitioner, and contended that the appellate authority as well as the reviewing authority committed error in confirming the orders of the disciplinary authority. In support of his submission that no major punishment can be imposed without conducting regular departmental

enquiry, he placed reliance on the judgment of the apex Court in **Kulwant Singh Gill v. State of Punjab**. He thus prayed that the impugned order be quashed and the writ petition allowed.

The Law Officer of the respondents-A.P.S.R.T.C. filed detailed counter. The learned Standing Counsel for the respondents-A.P.S.R.T.C. while reiterating the counter-averments submitted that in the accident that occurred on account of the negligence of the petitioner about ten passengers injuries and the bus was also badly damaged. A case of rash and negligent driving was registered against the petitioner in Crime No. 52/92 on the file of Savalyapuram Police Station, for the offence under Section 337 I.P.C. Due to the accident, the A.P.S.R.T.C. had paid an amount of Rs.1100/- as ex-gratia to the injured. An enquiry was conducted by the Assistant Manger into the charges leveled against the petitioner, and as the charges leveled against the petitioner, which are grave in nature, stood proved, the disciplinary authority imposed punishment of postponement of one annual increment for a period of 18 months with cumulative effect, besides recovering damages of Rs.1,000/- caused to the petitioner, which stood confirmed in appeal and review petition. He submitted that the punishment of postponement of one annual for a period of 18 months with cumulative effect is not a major punishment, and at any rate, the punishment having been imposed by the disciplinary authority on the basis of the report of a departmental enquiry, no exception can be taken thereto. He submitted that recovery of damages of Rs.1,000/- was ordered towards damaged caused to the bus, and the said recovery, has nothing to do with the punishment of postponement of one annual increment for a period of 18 months with cumulative effect, and therefore, it cannot be said that the disciplinary has imposed two punishments for the same misconduct and it amounted to double jeopardy.

Admittedly, the charges leveled against the petitioner stood proved in the departmental enquiry. One of the charges leveled against the petitioner is that he drove the bus in a rash and negligent manner. In the departmental enquiry, it was found by the Enquiry Officer, that the petitioner drove the bus on the wrong direction, and because of his rash and negligent driving, the accident took place, and as a result of which, the passengers suffered injuries. Considering the seriousness of the proved misconduct, the disciplinary authority imposed punishment of postponement of one increment for 18 months with cumulative effect, apart from ordering recovery of Rs.1,000/- towards damage caused to the bus.

Be it noted that recovery of damages caused to public property and imposition of punishment for the proved misconduct or negligence, are two different concepts. Recovery of amount in the value equivalent to the damage caused to the public property, is compensatory in nature, which the employer is entitled to recover from the employee, while imposition of punishment, such as postponement or stoppage of increment, with or without cumulative effect, which has the effect of causing a dent in the emoluments of the employee either temporarily or permanently, is penal in nature, which is obviously imposed by the employer on the employee for the proved misconduct and to bring about discipline in their cadres. Inasmuch as it is the case of the respondents-A.P.S.R.T.C. that the disciplinary authority not as a penal measure, but as a compensatory measure, had ordered

recovery of an amount of Rs.1,000/- from the salary of the petitioner towards damage caused to the bus, the petitioner cannot be allowed to contend that the disciplinary authority is not entitled to impose punishment for the proved misconduct, which in the instant case, has imposed punishment of postponement of one annual increment for a period of 18 months with cumulative effect. The recovery of damages and imposition of punishment, though arise out of the same misconduct, their concepts being different, in that the former being compensatory in nature and the latter being penal in nature, it cannot be said that the recovery of damages and imposition of punishment arising out of the same misconduct amounted to double jeopardy. In that view of the matter, reliance placed by the learned counsel for the petitioner on the judgment of a Division Bench of this Court in **Depot Manager, A.P.S.R.T.C. v. N. Ramulu,** is of no help to him, for in the said case, for the very same misconduct two punishments were imposed - recovery of damages from the employee as a measure of minor punishment and dismissal from service as a measure of major punishment. As recovery of damages was imposed as a minor punishment and dismissal from service as a major punishment, for the very same misconduct, the Division Bench held that it amounted to double jeopardy.

There can be no dispute that no major punishment can be imposed without conducting regular departmental enquiry, as also the ratio laid down by the apex Court in **Kulwant Singh Gill v. State of Punjab.** In the instant case, the disciplinary authority before imposing the punishment of postponement of one annual increment for a period of 18 months with cumulative effect, had a report of the departmental enquiry, which reported the proved misconduct of the petitioner, and on the basis of such report, the punishment was imposed, and no exception can be taken thereto, more so when it is the case of the respondents that said punishment is a minor punishment. Since the punishment of postponement of one annual increment for a period of 18 months with cumulative effect was imposed after a regular departmental enquiry, in which the petitioner participated, no interference is called for with the said punishment, which stood confirmed in appeal as also in the review petition. In **Regional Manager, Rajasthan SRTC v. Sohan Lal**, the apex Court held that it is not within the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless the sentence is wholly disproportionate to the misconduct proved. Having regard to the proved misconduct of the petitioner, namely rash and negligent driving of the bus on the wrong side causing injuries to passengers, the punishment imposed by the disciplinary authority on the petitioner of postponement of one annual increment for a period of 18 months with cumulative effect, cannot be said to be disproportionate, warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

There is no merit in the writ petition, and the same is accordingly dismissed.

N.V. RAMANA, J.

Date: 5th January, 2006.

KSR